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PATENT

REMARKS

Claims 1-3 and 5-15 remain in the application. Claim 9 has been amended to correct an informality.

§102 rejections

Claims 1-2, 5, 11-12, and 14-15 were rejected under §102(e) as anticipated by Chapman.

Chapman discloses a flashlight with a dimming function controlled by rotating a tail end cap, and a power supply function controlled by twisting the front housing section.

The rejection is traversed because the cited reference does not disclose all of the claimed elements. The action is in error when it states that the element 410 cited as disclosing a second switch (which determines a brightness of the lamp) is a ring rotatable about the axis. The only evidence cited to support the notion that the second switch is a ring rotatable about the axis, is a lengthy two-paragraph section of the cited reference, which makes no mention of element 410. In fact, element 410 has no dimming function as asserted; element 414 is a variable resistor that appears to provide the dimming function, and is shown in figure 36 as being at the tailcap of the flashlight, with no suggestion that it is a ring rotatable about the axis. Simply put, the cited reference does not have a dimming switch in this form. Accordingly claim 1 should be allowable over the cited reference.

Claims 1-3 and 5-15 depend from claim 1 and should be allowable for the above reasons and because of the feature set forth therein.

Claim 11 should be allowable for the additional reason that the element cited as the second switch (410) lacks the capability to establish the degree of power level as claimed, and further lacks the ability to move through a range of angular positions. Element 410 is a simple open and closed switch as indicated in paragraph 87, and in figure 40.

Claim 12 should be allowable for the additional reason that the element cited as the second switch (410) is not movable through a range of angular positions, does not operate to establish a degree of power level, and does not respond to a rotational force, nor is there evidence that the controller responds to a duration of force on the switch to establish the degree of power level.

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Regarding the rejection of claim 14, the action has quoted applicant's claim verbatim, and then cited a 700 word passage of the cited reference, leaving applicant to guess what elements and functions are actually being cited. The rejection contains no explanation, no element numbers, and no evidence that the passage actually supports the rejection. Accordingly, the rejection is traversed.

Claim 15 should be allowable for the additional reason discussed above with the respective claim 14, in that the rejection is legally inadequate, and unable to respond to.

§103 rejections

Claims 3 and 13 were rejected under 35 USC §103(a) as unpatentable over Chapman.

The first error in the rejection is in the action's incorrect assertion that Chapman teaches at least two independent electrical paths between first and second ends. The only evidence for the rejection is in the bald citation of Figures 1, 21, and 40. The action does not reference any text, nor identify any element numbers in the figures. Applicant is left to guess what elements the action asserts are providing independent electrical paths. Figure 1 does not show anything indicating an electrical path other than housing 20. Figure 40 does not provide any indication of which electrical connections might or might not extend between housing ends. Figure 21 clearly shows that the only elements extending between the ends are the housing 312, and tube liner 316. There is no evidence that these provide independent electrical paths.

The second error in the rejection is in the suggestion that the proposed modification would be a mere rearrangement of parts. For reasons discussed in applicant's specification, it becomes a complicated matter to move control switches from one end of the flashlight to another, in particularly because of the need for connections that extend the length of the flashlight. There is nothing in the prior art to suggest a practical solution to provide such a connection.

The third error in the rejection is in the inadequacy of the asserted motivation to make the proposed modification. The action asserts that the benefit of changing Chapman to the claimed configuration would be "to provide the user easy access in adjusting the intensity during use." Yet there is no evidence that the Chapman device suffers from any lack of access in adjusting intensity, nor that the alternate configuration would provide greater access. The motivation and rejection appear to be based in hindsight, based on applicant's disclosure.

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Claims 6-9 were rejected under 35 USC §103(a) is being unpatentable over Chapman, and further in view of Coffman. The rejection is traversed because there is no evidence that the magnetic reed switches of Kaufman could be adapted to the stroboscopic circuitry of Chapman. Moreover, the rejection is further traversed because the rejection lacks adequate motivation, asserting only "to provide a multifunction switching arrangement that is particularly resistant to corrosion and damage due to water." This motivation is inadequate because there is no indication that Chapman lacks a multifunction capability, or resistance to corrosion and water damage. Without such a lack, there is no motivation to make a complicated wholesale change to the switching configuration. In fact, the complexity of such a modification would teach away from its adoption. The motivation and rejection appear to be drawn in hindsight based on applicant's disclosure.

Claim 10 was rejected under 35 USC §103(a) is being unpatentable over Chapman in view of Hauck. Hauck is a novelty device that has several different color lamps.

The rejection is in error first because the references are from widely different fields of art; one seeking to improve a flashlight would not look to a novelty toy for improvements.

The second error is in the inadequacy of the proposed motivation to adopt the colored lights of Hauck. The action asserts "aesthetic appeal and greater control with respect to illumination", with no evidence that changing light colors would provide enhanced aesthetics, that colors would be desired by Chapman, or how offering multiple colors has any positive effect on "control." Colors provide color alternatives, not necessarily desired ones, and they do not offer control.

The third error in the rejection is in that there is no evidence of how or whether adoption of the Hauck toy concept could be practically applied to Chapman. Adopting multi color functionality would require significant mechanical, electrical, and optical changes, and control schemes that are not disclosed. It is disadvantageous to incur complex and uncertain modifications in a product when there is no suggestion that the change is desirable, except in hindsight. Accordingly, the references teach away from the proposed combination.

All pending claims should be allowable for the above reasons. Reconsideration of the application is respectfully requested.

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